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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,269	09/18/2003	Glenn Ballman	001-235	2268
29569	7590	11/07/2007		
FURR LAW FIRM 2622 DEBOLT ROAD UTICA, OH 43080			EXAMINER YOO, JASSON H	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 11/07/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/605,269

Applicant(s)

BALLMAN, GLENN

Examiner

Jasson H. Yoo

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3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 28-35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 28-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Oath/Declaration***

Applicant's name and signature does not match. See section 602 in the MPEP.

Furthermore, electronic signatures must be personally inserted with a first single forward slash mark before, and a second forward slash mark after, the electronic signatures (e.g., /Dr. James T. Jones, Jr./). See MPEP Patent Rules for signatures.

### ***Claim Objections***

Claims 29-31 are objected to because of the following informalities: "represent" should be --represented--. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

Claims 28 –35 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 28, the phrase "or the like" renders the claim(s) indefinite because the claim(s) include(s) elements not actually disclosed (those encompassed by "or the like"), thereby rendering the scope of the claim(s) unascertainable. See MPEP § 2173.05(d).

Claim 28 recite the limitation of "A system that has... computer software". It is not clear how a system comprises a computer software or program codes, without a

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computer-readable medium to store the computer software. It will be assumed that the system has a computer-readable medium to store the computer software.

Claims 29-35, depend on claim 20. However claim 20 has been cancelled. It will be assumed that the claims are dependent off of claim 28.

Claim 35 recites the limitation "the Equity Positions and Securities position". There is insufficient antecedent basis for this limitation in the claim.

***35 USC § 112 6<sup>th</sup> paragraph***

Claim 28, has invoked 35 USC § 112 6<sup>th</sup> paragraph. Means for inputting and storing system information on said storage means, will be interpreted as computer instructions to transfer electronic data, as described in Applicant Specification (paragraph 64 in US 2004/0064937).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 28-30, 33-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Eckert et al (US 2002/0077961).

Eckert discloses the following:

Claim 28. A system that has a plurality of shares represented by people (paragraphs 14 and 15) and purchased from brokers and traded like securities (paragraphs 69, 135, 159, 167) running on a computer processor (12 in Fig. 1) mean for processing data with a storage means for storing said data on a storage medium (18 in Fig. 1);

a communication means for transmitting data in a secure environment to and from various remote locations (Figs. 3 and 5); and

computer software means for creating and displaying trade data concerning a particular trade in the form of a trade record where said computer software means further comprises: means for inputting and storing information on said storage means (paragraphs 23-27, 95-100).

Claim 29. Shares are represented by sports figures (athletes, paragraph 31).

Claim 30. Shares are represented by entertainment figures (athletes, paragraph 31).

Claim 33. The game award prizes based on performance of the securities (awards money, paragraphs 14 and 15).

Claim 34. Dividends are awarded based on measurable performance of the players (measured on income, paragraphs 14 and 15).

Claim 35. The Equity Positions and Securities positions held in a Portfolio (Eckert discloses a method of purchasing securities, paragraphs 69, 135, 159, 167. These purchased securities represent portions of a portfolio).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 31 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eckert et al (US 2002/0077961).

Claim 31. Eckert significantly discloses the claimed invention as discussed above. Eckert specifically discloses the shares may be represented by performers such as professional athletes, actors, musicians and authors, but fails to specifically teach the shares are represented by politicians. Nevertheless having the shares represented by politicians is a design choice. Design changes that do not impact the function of system cannot be relied on to distinguish the claimed subject matter over prior art. In this case,

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the claimed subject matter of shares represent by politicians is an aesthetic design choice and does not functionally alter the system as suggested by Eckert in which shares represent by people are purchased and traded from brokers. Providing shares represented by politicians will attract the public who follow politics to purchase such shares. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eckert system of purchasing and trading shares represented by people in order to provide a predictable result of attracting the public who follow politics to purchase the shares.

Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eckert et al (US 2002/0077961) as applied to claim 28 above, and further in view of Binney (US 2002/0107073).

Claim 32. Eckert significantly discloses the claimed invention as discussed above. However, Eckert fails to teach the system is connected to wireless devices. In an analogous art interactive gaming systems using statistics of people, Binney discloses a gaming system for playing fantasy sport in which the system is connected to wireless devices (paragraph 20). Wireless devices allow portable devices such as PDA and laptops to access the Internet, and remotely interact with the gaming system. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Eckert's system and incorporate Binney's wireless device in order to access the Internet and remotely interact with the gaming system.



### ***Response to Arguments***

Applicant's arguments filed 9/4/07 have been fully considered but they are not persuasive. Applicant argues that Eckert does not teach the new limitation of shares being sold by a broker. However, Eckert discloses the limitations in paragraphs 69, 135, 159, 167.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jasson H. Yoo whose telephone number is (571)272-5563. The examiner can normally be reached on 8:30-5:00.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Xuan M. Thai can be reached on (571)272-7147. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JHY



**XUAN M. THAI**  
**SUPERVISORY PATENT EXAMINER**